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Date: January 29, 2007

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Fax # 571-273-8300

From: LuAnn K. Miller

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Sender's e-mail address: [lmiller@pogolaw.com](mailto:lmiller@pogolaw.com)

Sender's Direct Dial # 404-572-6624

Our File # 141697.00000-P1140US01

Attorney # 0373

Appl.# 09/770,599

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**Total Pages (Including This Page): 30 pages**

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**COMMENTS:**

Attached herewith are the following documents:

- 1) PTO/SB/21 Transmittal (1 page)
- 2) PTO/SB/17 Fee Transmittal (2 pages including duplicate)
- 3) Appeal Brief (26 pages)

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P. 2

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PTO/SB/21 (09-04)

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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	09/770,599
	Filing Date	January 28, 2001
	First Named Inventor	Eric Neil Miller
	Art Unit	3829
	Examiner Name	Nguyen, Dean Tan
	Attorney Docket Number	141697.00000-P1140U601
Total Number of Pages in This Submission		29

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
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## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Powell Goldstein LLP		
Signature			
Printed name	Charles L. Wamer II		
Date	January 29, 2007	Reg. No.	32,320

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Typed or printed name	LuAnn K. Miller	Date	January 29, 2007

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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL**  
**For FY 2006**☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 250.00

**Complete if Known**

Application Number	09/770,599
Filing Date	January 26, 2001
First Named Inventor	Eric Nail Miller
Examiner Name	Nguyen, Dean Tan
Art Unit	3629
Attorney Docket No.	141697.00000-P1140US01

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**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES**

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

<b>Total Claims</b>	<b>Extra Claims</b>	<b>Fee (\$)</b>	<b>Fee Paid (\$)</b>	<b>Multiple Dependent Claims</b>
<u>      </u> - 20 or HP = <u>      </u> x <u>      </u> = <u>      </u>				<b>Fee (\$)</b> <b>Fee Paid (\$)</b>

HP = highest number of total claims paid for, if greater than 20.

<b>Indep. Claims</b>	<b>Extra Claims</b>	<b>Fee (\$)</b>	<b>Fee Paid (\$)</b>
<u>      </u> - 3 or HP = <u>      </u> x <u>      </u> = <u>      </u>			

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

<b>Total Sheets</b>	<b>Extra Sheets</b>	<b>Number of each additional 50 or fraction thereof</b>	<b>Fee (\$)</b>	<b>Fee Paid (\$)</b>
<u>      </u> - 100 = <u>      </u> / 50 = <u>      </u> (round up to a whole number) x <u>      </u> = <u>      </u>				

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Appeal Brief

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**SUBMITTED BY**

Signature	<u>Charles L. Warner</u>	Registration No. (Attorney/Agent)	32,320	Telephone	404-672-6718
Name (Print/Type)	Charles L. Warner II	Date	January 29, 2007		

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Patents

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Eric Neil Miller et al.

Appl. No.: 09/770,599

Filed: January 26, 2001

For: ONLINE DONATION  
MANAGEMENT SYSTEM

Confirmation No.: 6893

Art Group: 3629

Examiner: Nguyen, Dean Tan

Atty Docket No.: 141697.00000-P1140US01

Customer ID: 25207

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## APPEAL BRIEF

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U.S. Patent Application Serial No. 09/770,599

**REAL PARTY IN INTEREST**

The real party in interest is Conscious Change, Inc., by virtue of an assignment from the inventors, recorded February 1, 2000 at Reel 010640, Frame 0718.

**RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences.

**STATUS OF CLAIMS**

Claims 1-17 were canceled.

Claims 18-26 are pending, were finally rejected, and are being appealed.

Claims 18, 24 and 26 are independent claims.

**STATUS OF AMENDMENTS**

No amendments were filed after the final Office Action.

An argument after the final Office Action was filed and entered October 25, 2006.

**SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claims 18 and 24 provide a specific method for allowing a person (donor) to make a donation to a charitable organization over the Internet.

Claim 18 is representative and is summarized below:

a prospective donor goes to the web site of a desired charitable organization (first web site) and indicates an intention to make a donation to that charitable organization (Page 7, lines 17-19; Page 8, lines 4-6; 14-19; Fig. 10; Claim 18, step (a));

the donor is then transferred to the second web site, the second web site not being a web site of that charitable organization (Page 7, lines 21-23; Page 8, lines 4-8; Fig. 10; Claim 18, step (b));

once the donor has been transferred to the second web site, the donor is then presented with information regarding donation options (Page 8, line 14 – Page 9, line 10; Page 10, lines 18-22; Page 11, line 6 – Page 11, line 12; Page 11, lines 15-17; Fig. 10, components 40-41; Fig. 11, components 47-50; Fig. 12, components 53-55; also see Figs. 2-3B for examples of displayed information; Claim 18, steps (c), (e) and (f));

the donor then decides and indicates what donation to make to that charitable organization, or what item to purchase from that charitable organization, once at the Second web site (Page 9, lines 6-10; Page 10, line 21 – Page 11, line 5; Page 11, lines 12-15, Page 12, lines 1-3; Fig. 10, components 42-43; Fig. 11, component 51; Fig. 12, components 56-57; Claim 18, steps (d), (g) and (h)); and

the second web site then completes the transaction (Page 9, lines 6-20; Page 11, lines 13-21; Page 12, line 10 – Page 13, line 11; Fig. 8, Fig. 17, components 65-72; Fig. 18; Claim 18, steps (i)-(l)).

Thus, while at the first web site (the desired charitable organization), the customer has not been presented any information about donation options, and therefore cannot select and has not selected what donation to make or what charitable item to purchase, but has only indicated a general interest in making some donation to that charitable organization.

Independent claim 26 provides for allowing a charitable organization to use a Central Internet web site to collect donations by uploading donation options from the Charitable Organization to the Central web site.

Claim 26 is summarized below:

a charitable organization has a web site (the first web site) (Page 2, lines 16-20; Page 3, lines 4-5, 9-12; Page 6, line 16 – Page 7, line 3; Page 8, lines 2-6 and 14-19; Fig. 1, component 11; Fig. 10, first two components; Claim 26, step (a));

the charitable organization uploads information regarding possible donations to the web site of another organization (the Central web site) (Page 3, lines 2-9; Page 4, lines 3-8; Page 7,

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line 21 – Page 8, line 2; Page 10, lines 1-17; Fig. 1, components 11 and 13; Fig. 9; Claim 26, steps (a)-(f)); and

the charitable organization provides a link from the first web site to the Central web site (Page 3, lines 9-14; Page 7, lines 2-3 and 21-23; Page 8, lines 2-8 and 16-19; Fig. 1; Fig. 10, second component; Claim 26, step (g)).

The charitable organization can therefore quickly and dynamically update the Central website, which is hosted by a different organization, with respect to donations to that charitable organization, and to use the Central web site resources to present the various donation options to the prospective donor and to complete the donation transaction for that charitable organization with the prospective donor.

#### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 18-26 were rejected under 35 U.S.C. §103(a) as being unpatentable over (1) [www.redcross.org](http://www.redcross.org) (January 25, 1999) (“Redcross”) in view of (2) U.S. Patent No. 6,029,141 to Bezos et al. (Bezos), and (3) Hopkins (Article “Charity Auctions And Tax Law”, Nov. 1994).

#### ARGUMENT

##### THE LAW

In rejecting claims under 35 U.S.C. §103 the examiner bears the burden of establishing a prima facie case of obviousness. *In re Deuel*, 51 F.3d 1552, 1557, 34 USPQ2d 1210 (Fed.Cir. 1995), citing *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed.Cir.1993); and *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed.Cir.1992). *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed.Cir.1988).

The examiner must produce evidence, a factual basis, sufficient to support a showing of obviousness, and this is an essential part of complying with the burden of presenting a prima facie case of obviousness. Only if this burden is met does the burden of coming forward with rebuttal argument or evidence shift to the applicant. *Rijckaert*, 9 F.3d at 1532, 28 USPQ2d at 1956. *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed.Cir. 1984). *In re Kahn*, 441 F.3d 977, 985-86, 78 USPQ2d 1329, 1335 (Fed.Cir. 2006). *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed.Cir. 1992).

Further, merely showing that all of the elements are in the prior art is not enough to establish a prima facie case of obviousness. To prevent use of hindsight, based on the invention, to defeat patentability of the invention, the examiner must show a motivation to combine the references that create the case of obviousness. "In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed." *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1458 (Fed.Cir. 1998). The art must also suggest the desirability of the asserted modification. Merely because art may be modified to produce certain claimed subject matter does not make the modification obvious. See *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84, n.14 (Fed.Cir. 1992).

"A general incentive does not make obvious a particular result, nor does the existence of techniques by which those efforts can be carried out." *In re Deuel*, 51 F.3d 1552, 1559, 34 USPQ2d 1210 (Fed.Cir. 1995).

"Obvious to try" has long been held not to constitute obviousness." *Id.*, citing *In re O'Farrell*, 853 F.2d 894, 903, 7 USPQ2d 1673, 1680-81 (Fed.Cir. 1988).

The Court of Appeals for the Federal Circuit also addressed the issue of combined-reference obviousness under 35 U.S.C. § 103 in *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316-17 (Fed.Cir. 2000), in which the court stated:

Most if not all inventions arise from a combination of old elements. Thus, every element of a claimed invention may often be found in the prior art. However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by applicant. (Citations to *In re Rouffet* omitted. Emphasis added).

The examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one



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having ordinary skill in the art. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed.Cir. 1988); *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed.Cir. 1985); *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed.Cir. 1984).

"If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent." (Emphasis added.) *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed.Cir. 1992). These showings by the examiner are thus an essential part of complying with the burden of presenting a *prima facie* case of obviousness.

The test in reviewing rejections under 35 U.S.C. §103 in which the examiner has relied on teachings of several references, is whether the references, viewed individually and collectively, would have suggested the claimed invention to a person possessing ordinary skill in the art. Citing references which merely indicate that isolated elements and/or features recited in the claims are known is not a sufficient basis for concluding that combination of the claimed elements would have been obvious unless the prior art suggested the desirability of the modification. *Ex parte Hiyamizu*, 10 USPQ2d 1393-1395 (Board of Patent Appeals and Inter., 1988); *In re Deminski*, 796 F.2d 436, 442, 230 USPQ 313 (Fed.Cir. 1986).

It is also well settled that "[T]he mere fact that the prior art *could* be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." Further, if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed.Cir. 1984).

Thus, the issue is whether a person of ordinary skill in the art would have had the motivation or made the analysis suggested by the examiner from the prior art alone, or whether the motivation and analysis attributed to the skilled worker by the examiner was guided by applicant's teachings in the application that is the subject of this appeal.

Of course, if the prior art does not even recognize the problem faced by the inventor then it could not have suggested a solution to that problem. As stated in *In re Shaffer*, 229 F.2d 476, 480, 108 USPQ 326, 329 (CCPA 1956): "[A] person having the references before him who was

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not cognizant of appellant's disclosure would not be informed that the problem faced by appellant ever existed. Therefore, can it be said that these references which never recognized appellant's problem would have suggested its solution? We think not ...." (Emphasis added.)

If there is no teaching or suggestion to make the modifications to arrive at the claimed invention then one must ask why would a person be motivated to make the modifications? People do not modify things just to get a modification when there is no problem because nothing is accomplished. The reason to modify things is to get some new feature or difference or advantage or solve some identified problem. The examiner has not pointed to an identification of the problem, the new feature, or any difference or advantage, in the references.

Thus, the examiner must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the examiner's conclusion.

Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellants. *Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444. See also *Piasecki*, 745 F.2d at 1472, 223 USPQ at 788.

As shown in the discussion of the cited art, and in the comparison of the cited art with the claimed invention, the cited art clearly provides no motivation or suggestion of implementing the claimed invention. Further, modifying only a step or two of the cited art results in a modified prior art system unsatisfactory for its intended purpose. Only by simultaneously modifying numerous steps in the prior art can the claimed invention be reached but, only by reading the instant application, can one divine the instant problem to be solved and the solution to the problem which leads to these modifications. As noted, this is impermissible hindsight.

As will be seen from the discussion below, not only has the examiner failed to provide a prima facie case of obviousness with respect to claims 18-25, the examiner has failed to provide any proof with respect to claim 26.

### **THE CITED REFERENCES**

First, let us consider what the prior art includes.

The prior art includes "standalone" web sites. A standalone web site is one by which the user can go and accomplish what the user desires without having to be transferred to another web

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site. Many web sites fit into this category, including the web site discussed in the Redcross article cited and relied upon by the examiner.

The prior art also includes "non-affiliated, referring" web sites. A "non-affiliated, referring" web site is a web site that has a gratuitous hyperlink to a non-affiliated other web site so that, after going to the non-affiliated, referring web site, the user can be transferred (hyperlinked, referred) to the non-affiliated other web site that might be of interest to the user. The examiner did not cite any references showing such. The web sites of many law firms, however, provide gratuitous hyperlinks to the USPTO, IRS, SEC, and other federal and state agencies which are not affiliated with the law firms.

The prior art also includes Bezos, which is the primary reference cited and relied upon by the examiner. Bezos identifies a specific problem: a Merchant sells a large and diverse selection of goods, and potential customers want access to product reviews, product ratings, and other information to make an informed purchase decision, but the Merchant lacks the will or the resources needed to generate or otherwise obtain and provide such information for the customer. (Col. 1, lines 24-36.)

Some benefits for the Merchant, as stated by Bezos, are that the task of marketing the Merchant's products is performed by entities that have established reputations in their respective fields (Col. 3, lines 26-29; Col. 9, lines 9-12), and that the Associate's web sites expose the Merchant's web site to the public and generate interest in others to become Associates (Col. 3, lines 29-32; Col. 9, lines 30-33).

Some motivations (benefits) stated by Bezos for the Associate are that the Associate does not need to be concerned with processing orders from the customer, as this is done by the Merchant web site (Col. 3, lines 21-25). Another motivation stated by Bezos for the Associate is, of course, money: the Associate is paid a commission based on purchases referred by that Associate (Col. 3, lines 1-21).

Bezos' solution is therefore to have Associates refer customers to the Merchant to purchase the Merchant's products. In Bezos, an Associate (one of potentially many Associates) has a web site, and the Associate provides product reviews, product ratings, and other information about the Merchant's products to allow the customer to make an informed purchase decision - Bezos refers to the information provided by the Associate as "catalog" information.

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(Col. 6, line 63 – col. 7, line 9.) The Merchant also has a web site and provides other information about the Merchant's product on the Merchant's web site - Bezos refers to the information on the Merchant's web site as "detail" information, such as a product "detail page". (Col. 12, lines 14-26; Col. 14, lines 16.)

Thus, a potential customer first goes to an Associate's web site and looks over the catalog information provided by the Associate. (Col. 6, line 59 – col. 7, line 9; Col. 11, lines 43-50.) Then, after the customer has identified the Merchant's product of interest, the customer clicks on the product and the customer is then transferred by a hyperlink to the Merchant's web site. The referred customer can then view the detail information provided by the Merchant and purchase the Merchant's product from the Merchant. (Col. 7, lines 12-20; Col. 11, lines 50-62; Col. 12, lines 14-26; Col. 14, line 62 – col. 15, line 16.)

Thus, a real incentive for the Merchant is money: (i) the Merchant does not have to expend time and resources providing "catalog" information; and (ii) the Associate does the work of enticing the customer and then referring the customer to the Merchant for the sale. Likewise, a real incentive for the Associate is also money: (i) the Associate gets rewarded for each sale to customer who is referred from the Associate's web site; and (ii) the Associate does not have to handle the actual sale and shipment of the product. (Col. 15, line 61 – col. 16, line 2.)

Bezos discloses that the Associate may download and upload enrollment forms and information with respect to the Merchant's web site. (Col. 9, line 54 – col. 10, line 28.) Bezos also discloses that some particular information may be sent from the Associate's web site or the customer's computer to the Merchant's web site in order to identify the referring Associate and/or the customer. (Col. 7, lines 21-34; Col. 8, lines 6-31.). Bezos, however, does not suggest that the Associate may download detail information from the Merchant's web site and display it on the Associate's web site, nor does Bezos suggest that the Associate may upload catalog information to the Merchant's web site.

Thus, summarizing the above, Bezos basically operates as follows:

The customer goes to the Associate's web site;

The Associate's web site presents catalog information, generated by the Associate, for the Merchant's products;

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The customer reviews that catalog information for the Merchant's products;

The customer selects (e.g., "clicks on") a desired product of the Merchant at the Associate's web site based on that catalog information for the Merchant's product;

The referred customer is then transferred (hyperlinked) to the Merchant's web site, along with an indication of the Merchant's product selected, the customer identity, and the Associate's identity;

The Merchant's web site presents to the referred customer the detail information, generated by the Merchant, for the selected product of the Merchant;

The referred customer selects (e.g., "clicks on") the Merchant's product for purchase; and

The referred customer purchases the Merchant's product.

The Merchant pays a commission or other compensation to the Associate for that particular purchase based upon the identification information previously transferred to the Merchant's web site.

#### **COMPARISON OF THE PRIOR ART WITH THE INVENTION OF CLAIMS 18-25.**

Let us now compare the prior art with the requirements of claims 18-25.

#### **CLAIMS 18-25.**

Independent claim 18 is representative and basically requires as follows:

- (a) The prospective donor goes to the Charitable Organization's web site;
- (a) The prospective donor indicates a general interest in making some kind of contribution to the Charitable Organization (such as by clicking on a link to the Second web site);
- (b) The prospective donor is then transferred (hyperlinked) to the Second web site;
- (c), (e), (f) The Second web site provides, to the prospective donor, the contribution options and information, hosted on the Second web site, for those contribution options which are offered for or sponsored by that Charitable Organization;
- (d), (g), (h) The prospective donor selects (e.g., "clicks on") a desired contribution option for that Charitable Organization at the Second web site; and

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(i), (j), (k), (l) The donor makes the desired contribution to the Charitable Organization via the Second web site.

(Parenthetical references above are to the steps of claim 18.)

Although the approach of Bezos may seem similar to the approach of claim 18 when viewed in a cursory fashion, the differences in these approaches become glaringly apparent and irreconcilable when viewed side-by-side.

Bezos	Summary of steps of Claim 18
The customer goes to the Associate's web site;	(a) The prospective donor goes to the Charitable Organization's web site;
The Associate's web site presents catalog information, generated by the Associate, for the <u>Merchant's</u> products;	---
The customer reviews that catalog information for the <u>Merchant's</u> product;	---
The customer selects (e.g., "clicks on") a desired product of the Merchant at the Associate's web site based on that catalog information for the <u>Merchant's</u> product;	---
---	(a) The prospective donor indicates a general interest in making some kind contribution <u>to the Charitable Organization</u> (such as by clicking on a link to the Second web site);
The referred customer is then transferred (hyperlinked) to the Merchant's web site,	(b) The prospective donor is then transferred (hyperlinked) to the Second web site;

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Bezos	Summary of steps of Claim 18
along with an indication of the <u>Merchant's</u> product selected, the customer identity, and the Associate's identity;	—
The Merchant's web site presents to the referred customer the detail information, generated by the Merchant, for the selected product of the Merchant;	—
---	(c), (e), (f) The Second web site provides, to the prospective donor, the contribution options and information, hosted on the Second web site, for those contribution options which are offered for or sponsored by that <u>Charitable Organization</u> ;
The referred customer selects (e.g., "clicks on") the <u>Merchant's</u> product for purchase; and	---
---	(d), (g), (h) The prospective donor selects (e.g., "clicks on") a desired contribution option <u>for that Charitable Organization</u> at the <u>Second</u> web site; and
The referred customer purchases the <u>Merchant's</u> product.	---
---	(i), (j), (k), (l) The donor makes the desired contribution <u>to the Charitable Organization</u> via the Second web site.

From the above, it is readily seen that the steps in Bezos are very different from the steps in claim 18. There are really only two steps that they have in common: (1) the customer/donor going to the Associate's/Charitable Organization's website; and (2) the customer/donor then being transferred to another web site.

The other steps are different, and even different entities are the ones actually selling the product: the Associate referring the customer to the Merchant to purchase the Merchant's product (Bezos), in contrast to the Charitable Organization referring the donor to the Central web site to purchase the Charitable Organization's product.

Note also that, in Bezos, the customer ends up buying the product from a different entity (the Merchant) than the customer originally went to (the Associate) for the product. In the claimed invention, even though the donor is now at the Second web site, the donor is still making the contribution for the same entity (Charitable Organization) that the donor originally went to.

Now, therefore, let us consider how many modifications are required in order to change Bezos' invention into the invention of claim 18.

1. First, one must decide that the Merchant is not going to be selling its own products, the products to be sold will now have to be the Associate's products instead of the Merchant's products.
2. Second, the catalog information, on the Associate's web site, for the Merchant's products, must be removed because, according to modification 1 above, there are no Merchant's products being sold – the products being sold will have to be those of the Associate.
3. Third, the hyperlinks from the Associate's web site to the various Merchant's products on the Merchant's web site must be removed because, again according to modification 1, there are no Merchant's products being sold.
4. Fourth, insert a hyperlink which allows the customer to indicate a general interest in making some kind of purchase from the Associate, rather than purchasing a specific item from the Merchant.
5. When the customer is transferred (hyperlinked) from the Associate's web site to the Merchant's web site, do not send an identification of the product selected because, according to modification 1, there was no product which could have been selected. Also, do not send a customer identification or an Associate identification because, as there is no Merchant product which can be purchased, it really doesn't matter whether the customer arrived at the Merchant's web site directly or through an Associate.



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6. Do not present information on the Merchant's products because, according to modification 1, there are none. Rather, only present information on products offered by the Associate.

7. Do not let the customer select a Merchant's product because, according to modification 1, there are none. Rather, only let the customer select a product offered by the Associate.

8. Do not let the customer purchase a Merchant's product because, according to modification 1, there are none. Rather, only let the customer purchase a product offered by the Associate.

As seen from the above, at least eight different modifications of Bezos are required in order to arrive at the invention of claim 18.

The examiner has not pointed to any suggestion, motivation, or teaching in the cited references for any of these modifications. In fact, the very first modification is strictly contrary to Bezos' teachings. In Bezos the Merchant has products for sale but does not want to, or cannot, provide "catalog" information about those products, so Bezos lets the Associates do that work, and rewards the Associate if the referral leads to a sale. If there are no Merchant's products (modification 1), then there is nothing for the Associate to provide information about, and no sales, so no rewards. So, this modification directly and completely goes against and destroys the reward motivation taught by Bezos. In other words, just this one change makes a modified Bezos unsatisfactory for its intended purpose.

The second and third modifications are just as troubling. As they arise from the first modification, they have the same problem. In addition, even if, contrary to modification 1, the Merchant has products for sale, if the Associate is not going to provide catalog information on the Merchant's products, or provide some kind of link to the Merchant's products, what is the Associate doing that would merit a reward from the Merchant? Nothing! These modifications therefore make no sense in view of Bezos stated purpose, motivation, and teachings.

The fourth modification is pointless. What incentive is there under Bezos to put a link on one's website saying "if you are interested in purchasing a product from a different company, click here"? Clearly, this modification makes no sense in view of the stated purpose, motivation, and teachings of Bezos. (It is noted that a non-affiliated, linked web site may provide a gratuitous

hyperlink to another web site (e.g., law firm hyperlink to USPTO web site), but the gratuitous link is not for the purpose of allowing the customer to purchase something at the other web site, or even suggesting that the customer should purchase something at the other web site.)

The fifth modification also makes a modified Bezos unsatisfactory for its intended purpose. If the Associate cannot be identified, how can the Associate be rewarded? If the customer cannot be identified, how can one determine whether the customer came directly or through an Associate web site? If the product cannot be identified, what is the customer purchasing? Does the customer start from scratch on product review and selection at the Merchant web site? Does any Associate get a commission? If so, which one? For which customer? For which purchase? How could one know the answers to any of these questions? And if one cannot know the answers, one cannot provide the commission to the Associate, so the Associate has no incentive to cooperate, and the Merchant is left to sell its products (if it has any) on its own – i.e., a standalone web site. This fifth modification therefore flies in the face of everything Bezos teaches and stands for: assistance in promoting a product, identifying the referral source for the sale of the product, and paying a commission to the referral source.

The sixth through eighth modifications further show the utter futility of trying to modify Bezos to arrive at the claimed invention.

Note also that the primary beneficiaries are different. In Bezos the Merchant who sells the product is the primary beneficiary, the Associate is merely a referral source and receives a commission for a successful referral. In the claimed invention, the referral source – the Charitable Organization – is also the primary beneficiary.

The above is not a slight modification of Bezos, it is a wholesale redesign of Bezos. These modifications, taken individually, produce a result which is meaningless and/or contrary to the purpose and result taught by Bezos. These modifications, taken collectively, are nowhere suggested in Bezos, nor is there any motivation to do them, and they are completely contrary to the teachings of Bezos. Bezos cannot be said to provide any motivation to modify itself in order to arrive at the claimed invention, and Red Cross is a standalone system which provides only a single web site. Therefore, without impermissible hindsight, neither Bezos nor RedCross provide any motivation, suggestion, or incentive for the claimed invention. Indeed, the examiner has been unable to point to any such stated motivation. Modifying Bezos without the benefit of the

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teachings of the present application would be like taking a motorcycle apart, throwing the pieces in the air, and expecting a helicopter to assemble itself when the pieces hit the ground. It is not obvious how or why that could or would happen. The same is true for claims 18-25. They are not obvious in view of Bezos, singly or in combination with RedCross.

In addition, in the final Office Action, the examiner has mischaracterized the teachings of Bezos. In the final Office Action, on page 6, in the first indented paragraph, the examiner identifies the 1<sup>st</sup> website as that of the Associate and the 2<sup>nd</sup> website as that of the Merchant. The examiner then states that Bezos teaches "the 2<sup>nd</sup> website has the resources to provide efficient marketing and review, data analysis, and efficiently attract potential customers to the web site with capable advertising resources, and the 1<sup>st</sup> website need not be concerned with these tasks." (Emphasis in original.) However, this is exactly opposite to what Bezos teaches. Bezos teaches that it is not the 2<sup>nd</sup> website (the Merchant), but it is the 1<sup>st</sup> website (the Associate) which can provide efficient marketing and review, data analysis, and efficiently attract potential customers to the web site with capable advertising resources. (Bezos, Col. 3, lines 26-32; Col. 9, lines 9-21 and lines 30-37.) If the 2<sup>nd</sup> website (the Merchant) had that capability then it would not need the 1<sup>st</sup> website (the Associate).

#### **INDEPENDENT CLAIM 26**

The examiner failed to provide any separate analysis or grounds for rejection of claim 26 and rejected claim 26 simply because claim 18 was rejected. In the both the first Office Action, at page 7, and in the final Office Action, at page 9, the examiner simply stated "As for the independent method claim 26, which has duplicate parts or steps of independent method claim 18 above, the duplicate of another part/process, i.e. for a 2<sup>nd</sup> charity website, 2<sup>nd</sup> central Internet website and 2<sup>nd</sup> donor would have been obvious to a skilled artisan for obtaining multiple effects if desired, absent evidence of unexpected results." (Emphasis in both originals.) Claim 26, however, has limitations which are not present in claim 18. These limitations were neither considered nor addressed by the examiner, even after being pointed out by the applicants in the both the Amendment and Response filed in response to the first Office Action and in the Rule 116 Response filed in response to the final Office Action.

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Independent claim 26 states as follows.

26. A method for first and second charitable organizations having respective first and second Internet websites to use a central Internet website in conjunction with receiving monetary charitable contributions from donors, the central Internet website not being an Internet website of either the first or the second charitable organization; comprising the steps of:

(1) for the first charitable organization having the first Internet website:

- (a) linking to the central Internet website;
- (b) providing to the central Internet website a plurality of projects of the first charitable organization;
- (c) providing to the central Internet website a plurality of contribution options for each of the projects of the first charitable organization, the contribution options comprising at least a gift and at least one of the following other contribution options: a sponsorship level, a membership, or a purchase of a tangible item;
- (d) providing to the central Internet website at least one of a description or a picture of each of the contribution options;
- (e) providing to the central Internet website a minimum monetary donation amount and a tax deductible amount in conjunction with at least one of the other contribution options;
- (f) providing to the central Internet website an address for receiving transactional data concerning contributions to the first charitable organization; and
- (g) providing at the first Internet website a link from the first Internet website to the central Internet website to allow a donor to make a monetary contribution to the first charitable organization; and

(2) for the second charitable organization having the second Internet website [repeat steps (a) – (g) again].

Note that steps (1)(b) - (1)(f) require that the first charitable organization provide to the central Internet web site specified information concerning the donation, such as by uploading, and such as a plurality of projects for that charitable organization, a plurality of contribution

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options for each of the projects, a description or a picture, a minimum monetary donation amount and a tax deductible amount, and an address for receiving transactional data concerning contributions. In addition, step 1(g) requires that the first charitable organization provide a link on its web site to the central Internet web site.

Note, again, that the products sold are those of the charitable organization (e.g., the Associate), not those of the central Internet web site (e.g., the Merchant). As shown above, this is completely contrary to Bezos and is not suggested by Bezos. Also, Bezos does not suggest that an Associate should be able to upload information on Associate's products to the Merchant's web site. Bezos only suggests that the Associate can provide a link to Merchants' products on the Merchant's web site. The examiner has not identified any art suggesting that the Associate should be able to upload information on Associate products to the Merchant's web site, nor has the examiner provided any suggestion or motivation for doing so.

Modifying Bezos to produce the invention of claim 26 would therefore require a complete rewriting of at least the five steps (b)-(f) of claim 26 and there is clearly no suggestion in Bezos that this should be done. Therefore, independent claim 26 is patentable over Bezos and RedCross.

### CONCLUSION

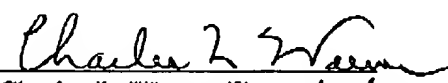
The examiner has thus failed to meet his initial burden by showing any motivation, or reason, or suggestion as to why or how Bezos should be modified to arrive at the claimed invention. Further, as noted, Bezos actually teaches away from any such modifications or, in the alternative, such modification would be contrary to the motivation and teachings of Bezos.

In addition, with respect to claim 26, the examiner has provided no evidence whatsoever.

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Applicants respectfully submit that the modification of Bezos urged by the examiner would not have been obvious to the person of ordinary skill in the art from the prior art and, therefore, the examiner should be reversed and the claims allowed.

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**CLAIMS APPENDIX**

1-17. (Canceled)

18. A method for a donor to make a monetary charitable contribution to a charitable organization, comprising the steps of:

(a) receiving at a first Internet website an indication of interest from a donor to make a monetary contribution to a charitable organization, the first Internet website being an Internet website of the charitable organization;

(b) hyperlinking the donor to a second Internet website to allow the donor to make the monetary contribution, the second Internet website not being an Internet website of the charitable organization;

(c) the second Internet website providing information regarding projects of the charitable organization to the donor;

(d) the second Internet website receiving a selection of a project from the donor;

(e) the second Internet website providing a plurality of contribution options to the donor for the selected project, the contribution options comprising at least a gift and at least one of the following other contribution options: a sponsorship level, a membership, or a purchase of a tangible item;

(f) the second Internet website providing information to the donor regarding a minimum monetary donation amount and a tax deductible amount in conjunction with at least one of the other contribution options;

(g) the second Internet website receiving a selection of a contribution option from the donor;

(h) the second Internet website receiving an indication of a monetary donation amount from the donor for the selection;

(i) the second Internet website receiving payment information from the donor for the monetary donation amount;

(j) the second Internet website receiving delivery information from the donor for the selection;

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(k) the second Internet website providing confirmation information to the donor for the selection; and

(l) the second Internet website collecting transactional data concerning the donor, the monetary donation amount, and the selection.

19. The method of claim 18 wherein step (e) comprises providing for the purchase of at least one of a report, a postcard, or a book.

20. The method of claim 18 wherein step (e) comprises displaying a plurality of tangible items, the tangible items being at least a report, a postcard, or a book.

21. The method of claim 18 wherein step (e) comprises providing textual information regarding at least one contribution option.

22. The method of claim 18 and further comprising the step of the second Internet website providing the transactional data to the charitable organization.

23. The method of claim 18 wherein step (g) comprises receiving a plurality of selections of contribution options and, for each selection of a contribution, further comprising the steps of receiving an indication of a monetary donation amount from the donor for each selection; receiving payment information from the donor for the monetary donation amount for each selection; receiving delivery information from the donor for each selection; and providing confirmation information to the donor for each selection.

24. A method for a plurality of donors to make a monetary charitable contribution to a plurality of charitable organizations, comprising the steps of:

(1) for a first donor:

(a) receiving at a first Internet website an indication of interest from a first donor to make a monetary contribution to a first charitable organization, the first Internet website being an Internet website of the first charitable organization;



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(b) hyperlinking the first donor to a third Internet website to allow the first donor to make the monetary contribution to the first charitable organization, the third Internet website being neither an Internet website of the first charitable organization nor an Internet website of a second charitable organization;

(c) the third Internet website providing information regarding projects of the first charitable organization to the first donor;

(d) the third Internet website receiving a selection of a project from the first donor;

(e) the third Internet website providing a plurality of contribution options to the first donor for the selected project for the first charitable organization, the contribution options comprising at least a gift and at least one of the following other contribution options: a sponsorship level, a membership, or a purchase of a tangible item;

(f) the third Internet website providing information to the donor regarding a minimum monetary donation amount and a tax deductible amount in conjunction with at least one of the other contribution options;

(g) the third Internet website receiving a selection of a contribution option from the first donor;

(h) the third Internet website receiving an indication of a monetary donation amount from the first donor for the selection;

(i) the third Internet website receiving payment information from the first donor for the monetary donation amount;

(j) the third Internet website receiving delivery information from the first donor for the selection;

(k) the third Internet website providing confirmation information to the first donor for the selection; and

(l) the third Internet website collecting transactional data concerning the first donor, the donation amount, and the selection; and

(2) for a second donor:

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(a) receiving at a second Internet website an indication of interest from a second donor to make a monetary contribution to a second charitable organization; the second Internet website being an Internet website of the second charitable organization;

(b) hyperlinking the second donor to the third Internet website to allow the second donor to make the monetary contribution to the second charitable organization;

(c) the third Internet website providing information regarding projects of the second charitable organization to the second donor;

(d) the third Internet website receiving a selection of a project from the second donor;

(e) the third Internet website providing a plurality of contribution options to the second donor for the selected project for the second charitable organization, the contribution options comprising at least a gift and at least one of the following other contribution options: a sponsorship level, a membership, or a purchase of a tangible item;

(f) the third Internet website providing information to the donor regarding a minimum monetary donation amount and a tax deductible amount in conjunction with at least one of the other contribution options;

(g) the third Internet website receiving a selection of a contribution option from the second donor;

(h) the third Internet website receiving an indication of a monetary donation amount from the second donor for the selection;

(i) the third Internet website receiving payment information from the second donor for the monetary donation amount;

(j) the third Internet website receiving delivery information from the second donor for the selection;

(k) the third Internet website providing confirmation information to the second donor for the selection; and

(l) the third Internet website collecting transactional data concerning the second donor, the donation amount, and the selection.

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25. The method of claim 24 and further comprising the steps of the third Internet website providing the transactional data for the first donor to the first charitable organization and providing the transactional data for the second donor to the second charitable organization.

26. A method for first and second charitable organizations having respective first and second Internet websites to use a central Internet website in conjunction with receiving monetary charitable contributions from donors, the central Internet website not being an Internet website of either the first or the second charitable organization; comprising the steps of:

(1) for the first charitable organization having the first Internet website:

(a) linking to the central Internet website;

(b) providing to the central Internet website a plurality of projects of the first charitable organization;

(c) providing to the central Internet website a plurality of contribution options for each of the projects of the first charitable organization, the contribution options comprising at least a gift and at least one of the following other contribution options: a sponsorship level, a membership, or a purchase of a tangible item;

(d) providing to the central Internet website at least one of a description or a picture of each of the contribution options;

(e) providing to the central Internet website a minimum monetary donation amount and a tax deductible amount in conjunction with at least one of the other contribution options;

(f) providing to the central Internet website an address for receiving transactional data concerning contributions to the first charitable organization; and

(g) providing at the first Internet website a link from the first Internet website to the central Internet website to allow a donor to make a monetary contribution to the first charitable organization; and

(2) for the second charitable organization having the second Internet website:

(a) linking to the central Internet website;

(b) providing to the central Internet website a plurality of projects of the second charitable organization;

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(c) providing to the central Internet website a plurality of contribution options for each of the projects of the second charitable organization, the contribution options comprising at least a gift and at least one of the following other contribution options: a sponsorship level, a membership, or a purchase of a tangible item;

(d) providing to the central Internet website at least one of a description or a picture of each of the contribution options;

(e) providing to the central Internet website a minimum monetary donation amount and a tax deductible amount in conjunction with at least one of the other contribution options;

(f) providing to the central Internet website an address for receiving transactional data concerning contributions to the second charitable organization; and

(g) providing at the second Internet website a link from the second Internet website to the central Internet website to allow a donor to make a monetary contribution to the second charitable organization.

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**EVIDENCE APPENDIX**

There is no additional evidence.

**RELATED PROCEEDINGS APPENDIX**

There are no related proceedings.